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this Court, have been entered to abide the decision of this case, I have reduced my opinion to writing, and will file it in the case.

Since preparing my opinion in this case I have been referred to a recent decision in the District Court for Massachusetts, as reported in the Boston Daily Advertiser, of January 11th instant, in which Judge Sprague decides "that liens founded on the necessity of vessels abroad, are never displaced by mortgage titles."

Decree for libellant.

*In the Washington County Supreme Court, State of Vermont,
November Term, A. D. 1854.*

KENDALL BRUCE AND WIFE vs. HIRAM THOMPSON.

1. A marriage settlement incomplete by reason of a want of trustees, is only an agreement to make a settlement, and will not, at law, exempt the annual crops of the wife's land from an execution against the husband.
2. By the language of the Vermont Married Woman's Act, the annual product of the wife's land is not exempted from the husband's control, or from his creditors.

The opinion of the court was delivered by

REDFIELD, CH. J.—This action is brought to recover the value of property, sold by defendant, as an officer, upon execution, for the sole debt of the husband, the property being the annual products of the wife's land, in possession, and carried on at the expense of the husband. The parties, before their intermarriage, made, in contemplation of such an event, what they considered a marriage contract, which was a stipulation between themselves merely, and without the intervention of trustees, that the wife should enjoy her separate property, without interference, on the part of the husband. The statute law of the state, in force, at the time of the crops being grown, and which it is claimed, controls the matter, was as follows: "The rents, issues and profits of the real estate of any married

woman, and the interest of the husband, in her right in any real estate, shall, during coverture, be exempt from attachment or levy of execution, for the sole debt of the husband, and no conveyance by such husband, of such rents, issues and profits, &c., shall be valid, unless by deed of husband and wife," executed according to the general laws of the State.

It is claimed first, that the marriage settlement, as it is called, was sufficient to exempt the annual crops of the wife's land from attachment and levy of execution on the husband's debt. But such a control, without the intervention of trustees, will not, at law certainly, have that effect. Such a control, so executed, is incomplete. It is, at most, but an agreement to make a suitable marriage settlement. And the parties, beneficially interested, whether the wife or children, may, on application to a Court of equity, compel the execution of such a settlement, as the court shall deem reasonable, which will then be effective to protect the property at law. 2 Story's Eq. Jurisp. §§ 983, 999.

In regard to the effect of the statute, which is similar to those of some of the other American States, there seems to have been, to some extent, a popular impression, that it would exempt the annual products of the wife's land, from the control of the husband, or his creditors. Such was the decision of the court below, and such the impression of one member of this court, at the first argument. But a careful examination of the terms of the statute, cannot fail, we think, to convince all, that the words used have no very marked fitness, to express the yearly products of land, which are the joint results of labor and the use of the land. Rents, issues and profits, more commonly, in the books certainly signify a chattel real interest in land, a kind of estate growing out of the land for life, or years, producing an annual or other rent. And in this statute it is so coupled with "the interest of the husband in her right in any real estate," so as to induce the suspicion certainly, that the legislature supposed they were only limiting the husband's control over such estate, as he would upon the marriage, acquire in the wife's land, and really doing nothing more than securing to the wife and family, the use of the wife's chattels real, and the husband's estate, in her

lands, whether during coverture or by the courtesy. Their estates, (although growing out of the wife's lands,) by the common law, upon the marriage, become vested in the husband, and he may sell, assign, mortgage, or otherwise dispose of them. 2 Kent's Comm. 113.

They may, too, probably be levied upon, for the sole debt of the husband, or might have been before this statute. And the statute of this state, giving the right generally to levy upon leasehold estates, uses almost the same terms as the statute under consideration. "The rents, issues and profits of real estate, leased for life, or years, shall be liable to be taken on execution;" thus showing, that the two statutes might, very likely, have adopted the same form of expression *de industria*. Rent's, issues and profits, too, apply only to net profits, and such as are of the nature of rent, which is, as every one understands, a *reditus* or return, by some one, holding the land of another, for which he *owes* such *return*. Now the husband holds the wife's land, in no such *tenure*, but in his own right, as husband, *owing a return* to no one. It is observable too, that the legislature, in providing a homestead for the family, and securing its annual products for their support, use appropriate and specific language, by providing that the homestead, "and the yearly products thereof," shall be exempt from execution, and that the husband shall not alienate or mortgage the homestead, but no provision is made against his *conveying the yearly products* of the homestead.

And if we regard, in the statute under consideration, the terms "rents, issues and profits" as equivalent to *yearly products*, we must also allow, that this statute has, in express terms, required the transfer of such yearly products, to be by deed of the husband and wife jointly, and to give effect to such provision, we must hold, that any other mode of alienation, even for value, cash in hand, if you please, or necessities for the family, or to pay the very laborers upon the land, is altogether void.

The very use of the term *conveyance*, in the statute, with reference to this interest, shows the probable application of the term to some estate in the realty, for it is scarcely supposable, that the legislature

would have used such a term, requiring it to be executed, with all the solemnities of other deeds of real estate, for the transfer of mere personal chattels.

It may be supposed by some, perhaps, that this construction gives less adequate protection to the wife's property, which seems of late to be regarded as a very cherished object by all. But we can only say, it affords all the protection which the law gives at present, and to convey the protection the length claimed, would certainly be attended with serious inconvenience, and often produce injustice, and for one, I am ready to say, I have no expectation, the legislature ever supposed they were making any such provision, or that they ever will, so far as the conveyance or transfer of the yearly products of the wife's land is concerned.

Judgment reversed and case remanded.

In the Supreme Court of Pennsylvania.

PATTERSON vs. ROBINSON.¹

A married woman may give a judgment for the purchase money of real estate, but execution will be confined to the real estate purchased.

This was an action of debt on a bond given by Arabella Patterson, the plaintiff in error and the defendant below, to William Robinson, Jr., for the purchase money of two lots of ground in Allegheny City. In 1848, the plaintiff below, conveyed the lots to the defendant, Arabella Patterson. Eighty dollars were paid in hand, and for the balance, the purchaser, who was a married woman, gave her own judgment bond. The deed recited that the conveyance was subject to the payment of the bond. Judgment was entered on the bond by virtue of the warrant of attorney, which was opened, and defendant permitted to plead coverture. The fact of coverture was admitted, and the facts above set forth were submitted in a case

¹ We are indebted to the Pittsburg Leg. Int. for this case.